

## **REMARKS/ARGUMENTS**

Claims 1-4, 6-8, 19, 21-25 and 27-34 are pending in the application. Claims 5, 9-18, 20 and 26 were previously cancelled. Through this Response, no claims have been amended. Applicants submit that 1-4, 6-8, 19, 21-25 and 27-34 are in condition for allowance and respectfully request such action.

### **Interview Summary**

This Interview Summary is filed in relation to the Examiner Interview conducted on November 16, 2009 via telephone. Applicants wish to thank Examiner Chowdhury for her time during the Examiner's interview, during which the finality of the Office Action and the rejections under 35 USC §103 were discussed. Examiner Chowdhury requested that Applicants place the arguments in the next-filed Response. Applicants wish to thank Examiner Chowdhury for spending the time preparing and conducting the interview.

The arguments against the 35 USC §103 rejections and the finality of the Office Action are provided below.

### **Rejections under 35 U.S.C. 103**

Claims 1-3, 19 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ong (US 5815662) in view of Ueno (US 6438596). Applicants respectfully request reconsideration and withdrawal of the rejection in view of the Remarks below.

As explained in more detail below, Ong is directed towards systems that delete infrequently requested movie files from a buffer. Once Ong's movie files are categorized as "infrequently requested," they are not copied or otherwise transferred from the buffer – rather they are simply deleted. In contrast, independent claim 1 recites:

the manager, *in response* to a frequently requested video asset becoming infrequently requested, *selects at least one* of the head-ends to store the infrequently requested video asset and provides the infrequently requested video asset to the selected at least one of the head-ends for storage in the respective secondary storage partition of the at least one of the head-ends selected to store the infrequently requested video asset.

(emphasis added; see also independent claim 19 reciting: *in response to* a frequently requested video asset stored in a primary storage partition becoming an infrequently requested video asset, *selecting one* of the head-ends to store the infrequently requested video asset”). The Office Action asserts that the “secondary storage partition (storage 12)” shown in FIG. 1 of Ong teaches these elements of independent claims 1 and 19. Applicants respectfully disagree. In fact, as expressly admitted by the Office Action, “Ong teaches [that] once a movie with a high priority level in the buffer becomes infrequently requested by users, *it is deleted* from the buffer.” (Office Action dated September 1, 2009, page 2). Unlike the recited embodiments of claims 1 and 19, Ong does not teach, disclose or even suggest a manager (or any apparatus) that “*in response to* a frequently requested video asset becoming infrequently requested, *selects at least one* of the head-ends to store the infrequently requested video asset.” Rather, Ong merely deletes assets.

For at least this reason, Applicants respectfully submit that Ong does not teach, disclose, or suggest the subject matter of independent claims 1 and 19 and that Ueno, the secondary reference, does not cure the deficiencies of Ong (such as for example, selecting a specific head-end for storing the infrequently requested content and then storing the content in a secondary partition of that head-end). Therefore, claims 1 and 19 are allowable. Claims 2-3 and 21 ultimately depend from claims 1 or 19, and are allowable for at least the same rationale. Applicants further respectfully submit that the claims 2-3 and 21 are also allowable for the novel limitations recited therein. Applicants therefore, respectfully request reconsideration and withdrawal of the rejection in regards to claims 1-3, 19 and 21.

Claims 4-8, 22-24, 25, 27-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ong and Ueno in view of Sato (US 6173328). Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 4-8 depend from independent claim 1 and claims 22-24 depend from independent claim 19. As discussed immediately above, neither Ong nor Ueno, considered individually or in combination, teach, disclose, or suggest the subject matter of claims 1 and 19. Applicants respectfully submit that Sato does not cure the

deficiencies of Ong and/or Ueno. Therefore, for at least the same reasons, claims 4-8 and 22-24 are not taught, disclosed or suggested by Ong and Ueno in view of Sato. Applicants further respectfully submit that the claims 4-8 and 22-24 are also allowable for the novel limitations recited therein.

Regarding independent claim 25, the claim recites a manager that “in response to a frequently requested video asset becoming infrequently requested, selects at least one of the head-ends to store the infrequently requested video asset and provides the infrequently requested video asset to the selected at least one of the head-ends for storage in the respective secondary storage partition of the at least one of the head-ends selected to store the infrequently requested video asset.” As discussed above in relation to claims 1 and 19, this element is entirely missing from Ong and Ueno. Applicants respectfully submit that Sato does not cure this deficiency. Claims 27-34 depend from independent claim 25 and, therefore, are allowable for at least the same reason. Applicants further respectfully submit that the claims 27-34 are also allowable for the novel limitations recited therein.

Regarding claims 6 and 27, the Office Action asserts that Col. 19, lines 20-55 of Ueno teaches the claimed content managers. Applicants respectfully disagree. Specifically, claim 6 recites:

a content manager of a local head-end at which a video asset request is received, ***in response to*** determining that a requested video asset is stored locally, is adapted to ***notify the stream session manager to deliver*** the requested video asset to the local server for transmission by the local server to the requesting subscriber equipment via the access network.

(Emphasis added, Claim 27 recites: “wherein the content manager, ***in response to*** determining that the requested video asset is stored locally, is adapted to ***notify the stream session manager to deliver*** the requested video asset to a local server for transmission by the local server to the requesting subscriber equipment”). In contrast, Ueno does not disclose a content manager (or any apparatus) that “in response to determining that a requested video asset is stored locally, is adapted to notify the stream session manager to deliver the requested video asset.” Rather, Ueno teaches that “the service control unit 1007 ***informs the user 1010*** of a video source to be

selected...[which] may include a list of video titles by characters, graphic display, and icon display showing the contents of the video. ...The *user 1010 selects a desired video source among the proposed video sources.*” (Ueno, Col. 19, ll. 28-37, emphasis added). For at least this reason, claims 6 and 27 are not taught, disclosed, or suggested by Ueno, Ong, or Sato, either individually or in combination.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection in regards to claims 4-8, 22-24, 25, 27-34.

### **Finality of the Office Action**

Applicants respectfully submit that the new grounds of rejection set forth in the Office Action dated September 1, 2009 were not necessitated by Applicant’s amendment, and therefore, respectfully request reconsideration and withdrawal of the finality of the Office Action.

The Office Action acknowledges that the new reference which forms the new grounds for rejection is directed towards subject matter that was already recited in the claims. Specifically, the Action states that “Applicant argues that none of the references teach that files are transmitted from a primary storage partition to a secondary storage partition upon being deemed infrequently requested. In this Office Action, the *Examiner has brought in Ong (5815662) to teach this limitation.*” (Office Action dated September 1, 2009, page 2, emphasis added).

Looking to independent claim 19, the Office Action alleges the new reference (“Ong”) teaches the last recited element of the claim. *This element of claim 19 was not amended by the Applicants since issuance of the last Office Action.* In fact, the only amendments to claim 19 were 1) the inclusion of the word “and” before the last recited element; 2) removal of the word “the” before video assets in the first element to correct antecedent basis issues; 3) change “each headend” to clearly recite “each of a plurality of headends;” and 4) amend the preamble to comply with the Federal Circuit’s ruling in *In re Bilski*. The new grounds of rejection, therefore, were not necessitated by Applicant’s amendments. Rather, the new grounds of rejection addressed the shortcomings of previous art applied to the existing claim language.

Regarding independent claim 1, the element-at-issue was not amended except to recite “at least” before recitations of “one of the head-ends.” The remainder of the claim was only amended to 1) replace the word “for” with “adapted to” and 2) amendment of the preamble. The new grounds of rejection, therefore, were not necessitated by Applicants’ amendments. Rather, the new grounds of rejection addressed the shortcomings of the previous art applied to the existing claim language.

For at least these reasons, Applicant respectfully submits that the finality of the April 1, 2009 Office Action is incorrect and respectfully seeks reconsideration.

### **CONCLUSION**

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

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